IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
August 15, 2006 Session

STATE OF TENNESSEE v. DALE GENE RICHIE, ALIAS G. DALE RICHIE, ALIAS DALE GENE RITCHIE

Direct Appeal from the Criminal Court for Hamilton County
No. 249327 Douglas A. Meyer, Judge

No. E2005-02596-CCA-R3-CD - Filed January 3, 2007

The defendant, Dale Gene Richie, appeals his convictions pursuant to a certified question of law. The issue presented is whether the officer had reasonable suspicion to perform an investigatory stop of the defendant based on the totality of the circumstances. After review, we affirm the trial court's refusal to grant the defendant's motion to suppress.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which ALAN E. GLENN, J., joined. GARY WADE, P.J., not participating.

Lloyd A. Levitt, Chattanooga, Tennessee, for the appellant, Dale Gene Richie, Alias G. Dale Richie, Alias Dale Gene Ritchie.

Paul G. Summers, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; William H. Cox, III, District Attorney General; and James A. Woods, Jr., and Jason L. Thomas, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The defendant pled guilty to driving under the influence, third offense and driving on a revoked license. The defendant's plea agreement reserved a certified question of law pursuant to Tennessee Rule of Criminal Procedure 37(b)(2)(A). The trial court denied the defendant's motion to suppress all evidence pursuant to the officer's stop of the defendant's vehicle. The certified question of law reserved was "[w]hether Deputy Fulmer had reasonable suspicion to stop [the] defendant based on [the] defendant's driving four to five inches over the center line and the totality of the circumstances of the defendant's driving."

Deputy Thomas Fulmer of the Hamilton County Sheriff's Department testified at the suppression hearing concerning the stop of the defendant. He stated that he was patrolling on River Canyon Road, which he described as a "two-lane road. It's a very curvy road, very, very treacherous road." Deputy Fulmer was driving in an easterly direction and met two vehicles in a curve. The defendant's truck was the second vehicle. He stated that the defendant's vehicle was swerving from side to side and crossed over the double yellow center line approximately four to five inches into the east lane of traffic. Deputy Fulmer stated that he pulled over to avoid contact with the defendant's vehicle, then turned and followed the defendant from a distance. The defendant turned on a road leading into Marion County. The defendant was parked in a driveway and was walking toward a house when Deputy Fulmer asked him to come back.

The trial court stated that the officer had articulated grounds of reasonable suspicion based on the defendant's driving over the center line and soon thereafter turning off onto another road. However, the defendant was allowed to testify that the vehicle he was driving was a three-quarter-ton Ford truck equipped with tires eight inches in width.

The findings of fact made by the trial court at the hearing on a motion to suppress are binding upon this court unless the evidence contained in the record preponderates against them. State v. Ross, 49 S.W.3d 833, 839 (Tenn. 2001). The trial court, as the trier of fact, is able to assess the credibility of the witnesses, determine the weight and value to be afforded the evidence, and resolve any conflicts in the evidence. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). The prevailing party is entitled to the strongest legitimate view of the evidence and all reasonable inferences drawn from that evidence. State v. Hicks, 55 S.W.3d 515, 521 (Tenn. 2001). However, this court is not bound by the trial court's conclusions of law. State v. Randolph, 74 S.W.3d 330, 333 (Tenn. 2002). The application of the law to the facts found by the trial court are questions of law that this court reviews de novo. State v. Daniel, 12 S.W.3d 420, 423 (Tenn. 2000). The defendant has the burden of establishing that the evidence contained in the record preponderates against the findings of fact made by the trial court. Braziel v. State, 529 S.W.2d 501, 506 (Tenn. Crim. App. 1975).

The State concedes that the defendant has complied with the requirements of reserving a certified question of law. Tenn. R. Crim. P. 37(b)(2)(A). The issue reserved on review is dispositive. State v. Preston, 759 S.W.2d 647 (Tenn. 1988). Hence, our sole determination is whether Deputy Fulmer possessed an articulable, reasonable suspicion for an investigatory stop. Terry v. Ohio, 397 U.S. 1, 27, 88 S. Ct. 1868, 1883 (1968); Hughes v. State, 588 S.W.2d 296, 305 (Tenn. 1979); State v. Foote, 631 S.W.2d 470, 472 (Tenn. Crim. App. 1982). In evaluating whether an officer's reasonable suspicion is supported by specific and articulable facts, a court must consider the totality of the circumstances. See State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992).

The State offers Tennessee Code Annotated section 55-8-123(1) (1998), as proof of a driving violation, providing grounds for the officer's stop of the defendant's vehicle. In pertinent part, the statute provides: "[w]henever any roadway has been divided into two (2) or more clearly marked lanes for traffic, . . . [a] vehicle shall be driven as nearly as practicable entirely within a single lane. . . ." Our courts have not interpreted such language as a requirement for driving perfection. "[I]f

failure to follow a perfect vector down the highway . . . [was] sufficient reason[ ] to suspect a person of driving while impaired, a substantial portion of the public would be subject each day to an invasion of their privacy." State v. Binette, 33 S.W.3d 215, 219 (Tenn. 2000) (quoting United States v. Lyons, 7 F. 3d 973, 976 (10th Cir. 1993)). Binette also cautions that hyper-technical driving requirements can create a "stop at will" standard violative of the Fourth Amendment. Binette, 33 S.W.3d at 219-20.

Nevertheless, in the case at hand, the trial court's determination is entitled to considerable deference. Odom, 928 S.W.2d at 23. In addition to Binette, the defendant argues that State v. John Crawley, Sr., No. M2003-01289-CCA-R3-CD, 2004 Tenn. Crim. App. LEXIS 54 (Tenn. Crim. App. at Nashville, Jan. 23, 2004), is supportive authority for the defendant's argument. However, both cases involved video evidence of the alleged driving improprieties that gave rise to the respective stops. When such evidence is available and credibility is not in issue, an appellate court should review the record de novo and dispense with the presumption of correctness ordinarily afforded the trial court's findings. See Binette, 33 S.W.3d at 217. Such is not the case herein. In addition, the video in Crawley demonstrated that although the defendant drifted in the road, there was no center line and no other traffic that could be affected. Likewise, the Binette court had the benefit of the video in order to determine that the driver's movements within his lane were not exaggerated. Binette, 33 S.W.3d at 219.

The defendant also cites to State v. Carl Martin, No. W2002-00066-CCA-R3-CD, 2003 Tenn. Crim. App. LEXIS 12 (Tenn. Crim. App. at Jackson, Jan. 2, 2003), in support of his appeal. This court therein observed that drifting over the lane once in a curve did not constitute a traffic violation when there was no evidence that other traffic was affected. Herein, Deputy Fulmer testified that the defendant's veering did affect traffic as it caused him to take evasive action.

State v. James Chester Cobb, Sr., C.C.A. No. 01-C-01-9011-CC-00308, 1991 Tenn. Crim. App. LEXIS 336 (Tenn. Crim. App. at Nashville, May 7, 1991), involved a stop precipitated by an unverified anonymous tip. The officer observed the driver veer slightly into the other lane but attached no significance to the veering action. This court concluded that the driver's slight intrusion into the other lane could be interpreted innocuously but suppressed the evidence resulting from the stop due to the insufficiency of the factual basis of the anonymous report. We believe that the present case is factually distinguishable from James Chester Cobb, Sr. and the previous cases discussed above.

In our view, the instant facts present a close case. We are reluctant to create precedent that treats minor driving indiscretions as justification for investigatory stops otherwise known as a stop at will standard. We attach no significance to the second articulated suspicion found by the trial court, that the driver turned off onto another public road. There was no testimony that the pursuing officer had activated his lights or siren to give the defendant notice that he was being followed. However, giving due deference to the trial court under the standard of review applicable and the facts as recited by Deputy Fulmer, we conclude that the stop was supported by reasonable suspicion. The officer observed the defendant swerving then crossing the center line, which caused the officer to

take evasive action to avoid contact. We conclude that the defendant's actions, which caused disruption to oncoming traffic, provided reasonable suspicion for the subsequent investigatory stop. Accordingly, we affirm the judgment of the trial court.

_____

JOHN EVERETT WILLIAMS, JUDGE